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SENATE BILL 103

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Steven P. Neville

AN ACT

RELATING TO PUBLIC PROCUREMENT; SETTING THE NUMBER OF MEMBERS OF SELECTION COMMITTEES FOR DESIGN AND BUILD PROJECTS AND FOR CERTAIN PROFESSIONAL SERVICES; ESTABLISHING HOW EVALUATION SCORES ARE HANDLED.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 13-1-119.1 NMSA 1978 (being Laws 1997, Chapter 171, Section 5, as amended) is amended to read:

"13-1-119.1. PUBLIC WORKS PROJECT DELIVERY SYSTEM--DESIGN AND BUILD PROJECTS AUTHORIZED.--

A. Except for road and highway construction or reconstruction projects, a design and build project delivery system may be authorized when the state purchasing agent or a central purchasing office makes a determination in writing that it is appropriate and in the best interest of the state or

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1 local public body to use the system on a specific project with
2 a maximum allowable construction cost of more than ten million
3 dollars (\$10,000,000). The determination shall be issued only
4 after the state purchasing agent or a central purchasing office
5 has taken into consideration the following criteria, which
6 shall be used as the minimum basis in determining when to use
7 the design and build process:

8 (1) the extent to which the project
9 requirements have been or can be adequately defined;

10 (2) time constraints for delivery of the
11 project;

12 (3) the capability and experience of potential
13 teams with the design and build process;

14 (4) the suitability of the project for use of
15 the design and build process as concerns time, schedule, costs
16 and quality; and

17 (5) the capability of the using agency to
18 manage the project, including experienced personnel or outside
19 consultants, and to oversee the project with persons who are
20 familiar with the design and build process.

21 B. When a determination has been made by the state
22 purchasing agent or a central purchasing office that it is
23 appropriate to use a design and build project delivery system,
24 the design and build team shall include, as needed, a New
25 Mexico registered engineer or architect and a contractor

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1 properly licensed in New Mexico for the type of work required.

2 C. Except as provided in Subsections [~~F~~] G and [~~G~~]
3 H of this section, for each proposed state or local public
4 works design and build project, a two-phase procedure for
5 awarding design and build contracts shall be adopted and shall
6 include at a minimum the following:

7 (1) during phase one, and prior to
8 solicitation, documents shall be prepared for a request for
9 qualifications by a registered engineer or architect, either
10 in-house or selected in accordance with Sections 13-1-120
11 through 13-1-124 NMSA 1978, and shall include minimum
12 qualifications, a scope of work statement and schedule,
13 documents defining the project requirements, the composition of
14 the selection committee and a description of the phase-two
15 requirements and subsequent management needed to bring the
16 project to completion. Design and build qualifications of
17 responding firms shall be evaluated and a maximum of five firms
18 shall be short-listed in accordance with technical and
19 qualifications-based criteria; and

20 (2) during phase two, the short-listed firms
21 shall be invited to submit detailed specific technical concepts
22 or solutions, costs and scheduling. Unsuccessful firms may be
23 paid a stipend to cover proposal expenses. After evaluation of
24 these submissions, selection shall be made and the contract
25 awarded to the highest-ranked firm.

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1 D. A selection committee described in Subsection C
2 of this section shall consist of a minimum of four members.
3 Prior to the selection of a short list of responding firms in
4 phase one or the selection of the highest ranked firm in phase
5 two, the highest and lowest total score given by all members of
6 the selection committee for each firm shall be disregarded and
7 the selection shall be made based on the average of the
8 remaining selection committee total scores for each firm.

9 ~~[D-]~~ E. Except as provided in Subsections ~~[F]~~ G and
10 ~~[G]~~ H of this section, to ensure fair, uniform, clear and
11 effective procedures that will strive for the delivery of a
12 quality project on time and within budget, the secretary, in
13 conjunction with the appropriate and affected professional
14 associations and contractors, shall promulgate rules applicable
15 to all using agencies, which shall be followed by all using
16 agencies when procuring a design and build project delivery
17 system.

18 ~~[E-]~~ F. A state agency shall make the decision on a
19 design and build project delivery system for a state public
20 works project, and a local public body shall make that decision
21 for a local public works project. A state agency shall not
22 make the decision on a design and build project delivery system
23 for a local public works project.

24 ~~[F-]~~ G. The requirements of Subsections C ~~[and]~~, D
25 and E of this section and the minimum construction cost

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1 requirement of Subsection A of this section do not apply to a
2 design and build project delivery system and the services
3 procured for the project if:

4 (1) the maximum allowable construction cost of
5 the project is four hundred thousand dollars (\$400,000) or
6 less; and

7 (2) the only requirement for architects,
8 engineers, landscape architects, construction managers or
9 surveyors is limited to either site improvements or adaption
10 for a pre-engineered building or system.

11 [~~G~~] H. The procurement of a design and build
12 project delivery system qualifying for exemptions pursuant to
13 Subsection [~~F~~] G of this section, including the services of any
14 architect, engineer, landscape architect, construction manager
15 or surveyor needed for the project, shall be accomplished by
16 competitive sealed bids pursuant to Sections 13-1-102 through
17 13-1-110 NMSA 1978."

18 Section 2. Section 13-1-120 NMSA 1978 (being Laws 1984,
19 Chapter 65, Section 93, as amended) is amended to read:

20 "13-1-120. COMPETITIVE SEALED QUALIFICATIONS-BASED
21 PROPOSALS--ARCHITECTS--ENGINEERS--LANDSCAPE ARCHITECTS--
22 CONSTRUCTION MANAGERS--SURVEYORS--SELECTION PROCESS.--

23 A. For each proposed state public works project,
24 local public works project or construction management contract,
25 the architect, engineer, landscape architect, construction

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1 management and surveyor selection committee, [~~state highway~~
2 ~~and~~] department of transportation [~~department~~] selection
3 committee or local selection committee, as appropriate, shall
4 evaluate statements of qualifications and performance data
5 submitted by at least three businesses in regard to the
6 particular project and may conduct interviews with and may
7 require public presentation by all businesses applying for
8 selection regarding their qualifications, their approach to the
9 project and their ability to furnish the required services.

10 B. The appropriate selection committee shall
11 select, ranked in the order of their qualifications, no less
12 than three businesses deemed to be the most highly qualified to
13 perform the required services [~~after considering~~]. Businesses
14 shall be ranked in order of their qualifications after the
15 highest and lowest evaluation scores given by members of the
16 selection committee for each business being evaluated are
17 disregarded and the remaining scores for each business are
18 averaged. In making a selection, the selection committee shall
19 consider the following criteria, together with [~~any~~] criteria,
20 except price, established by the using agency authorizing the
21 project:

22 (1) specialized design and technical
23 competence of the business, including a joint venture or
24 association, regarding the type of services required;

25 (2) capacity and capability of the business,

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1 including any consultants, their representatives,
2 qualifications and locations, to perform the work, including
3 any specialized services, within the time limitations;

4 (3) past record of performance on contracts
5 with government agencies or private industry with respect to
6 such factors as control of costs, quality of work and ability
7 to meet schedules;

8 (4) proximity to or familiarity with the area
9 in which the project is located;

10 (5) the amount of design work that will be
11 produced by a New Mexico business within this state;

12 (6) the volume of work previously done for the
13 entity requesting proposals [~~which~~] that is not seventy-five
14 percent complete with respect to basic professional design
15 services, with the objective of effecting an equitable
16 distribution of contracts among qualified businesses and of
17 assuring that the interest of the public in having available a
18 substantial number of qualified businesses is protected;
19 provided, however, that the principle of selection of the most
20 highly qualified businesses is not violated; and

21 (7) notwithstanding any other provisions of
22 this subsection, price may be considered in connection with
23 construction management contracts, unless the services are
24 those of an architect, engineer, landscape architect or
25 surveyor.

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1 C. Notwithstanding the requirements of Subsections
2 A and B of this section, if fewer than three businesses have
3 submitted a statement of qualifications for a particular
4 project, the appropriate committee may:

5 (1) rank in order of qualifications, after
6 disregarding the committee's highest and lowest evaluation
7 scores and averaging the remaining scores for each business
8 being evaluated, and submit to the secretary or local governing
9 authority of the public body for award those businesses [~~which~~]
10 that have submitted a statement of qualifications; or

11 (2) recommend termination of the selection
12 process pursuant to Section 13-1-131 NMSA 1978 and sending out
13 [~~of~~] new notices of the resolicitation of the proposed
14 procurement pursuant to Section 13-1-104 NMSA 1978. [~~Any~~] A
15 proposal received in response to the terminated solicitation is
16 not public information and shall not be made available to
17 competing offerors.

18 D. The names of all businesses submitting proposals
19 and the names of all businesses, if any, selected for interview
20 shall be public information. After an award has been made, the
21 appropriate selection committee's final ranking and evaluation
22 scores for all proposals shall become public information.
23 Businesses [~~which~~] that have not been selected for contract
24 award shall be so notified in writing within fifteen days after
25 an award is made."

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1 Section 3. Section 13-1-121 NMSA 1978 (being Laws 1984,
2 Chapter 65, Section 94, as amended) is amended to read:

3 "13-1-121. COMPETITIVE SEALED QUALIFICATIONS-BASED
4 PROPOSALS--ARCHITECTS--ENGINEERS--LANDSCAPE ARCHITECTS--
5 CONSTRUCTION MANAGERS--SURVEYORS--SELECTION COMMITTEE--STATE
6 PUBLIC WORKS PROJECTS.--

7 A. The "architect, engineer, landscape architect,
8 construction management and surveyor selection committee" is
9 created. The committee, which shall serve as the selection
10 committee for state public works projects, except for highway
11 projects of the [~~state highway and transportation~~] department
12 of transportation, is composed of a minimum of four members [~~as~~
13 ~~follows~~], including:

14 (1) one [~~member~~] or more members of the agency
15 for which the project is being designed;

16 (2) the director of the property control
17 division of the general services department, who shall be
18 [~~chairman~~] chair;

19 (3) one [~~member~~] or more members designated by
20 the [~~architect-engineer-landscape architect~~] joint practice
21 committee; and

22 (4) one [~~member~~] or more members designated by
23 the secretary.

24 B. The staff architect or [~~his~~] the staff
25 architect's designee of the property control division shall

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1 serve as staff to the architect, engineer, landscape architect,
2 construction management and surveyor selection committee.

3 C. The members of the architect, engineer,
4 landscape architect, construction management and surveyor
5 selection committee shall be reimbursed by the property control
6 division for per diem and mileage in accordance with the
7 provisions of the Per Diem and Mileage Act.

8 D. The [~~state highway and transportation~~]
9 department of transportation shall create a selection committee
10 composed of a minimum of four members by rule, after notice and
11 hearing, [~~which~~] that shall serve as the selection committee
12 for highway projects of the department."

13 Section 4. Section 13-1-122 NMSA 1978 (being Laws 1984,
14 Chapter 65, Section 95, as amended) is amended to read:

15 "13-1-122. COMPETITIVE SEALED QUALIFICATIONS-BASED
16 PROPOSALS--AWARD OF ARCHITECT, ENGINEERING, LANDSCAPE
17 ARCHITECT, CONSTRUCTION MANAGEMENT AND SURVEYING CONTRACTS.--
18 The secretary or [~~his~~] the secretary's designee or the
19 secretary of [~~the highway and~~] transportation [~~department~~] or
20 [~~his~~] the secretary of transportation's designee or a designee
21 of a local public body shall negotiate a contract with the
22 highest qualified business for the architectural, landscape
23 architectural, engineering, construction management or
24 surveying services at compensation determined in writing to be
25 fair and reasonable. In making this decision, the appropriate

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1 secretary or [~~his~~] that secretary's designee or the designee of
2 a local public body shall take into account the estimated value
3 of the services to be rendered and the scope, complexity and
4 professional nature of the services. Should the appropriate
5 secretary or [~~his~~] that secretary's designee or the designee of
6 a local public body be unable to negotiate a satisfactory
7 contract with the business considered to be the most qualified
8 at a price determined to be fair and reasonable, negotiations
9 with that business shall be formally terminated. The
10 appropriate secretary or [~~his~~] that secretary's designee or the
11 designee of a local public body shall then undertake
12 negotiations with the second most qualified business. Failing
13 accord with the second most qualified business, the appropriate
14 secretary or [~~his~~] that secretary's designee or a designee of a
15 local public body shall formally terminate negotiations with
16 that business. The appropriate secretary or [~~his~~] that
17 secretary's designee or the designee of the local public body
18 shall then undertake negotiations with the third most qualified
19 business. Should the appropriate secretary or [~~his~~] that
20 secretary's designee or a designee of a local public body be
21 unable to negotiate a contract with any of the businesses
22 selected by the committee, additional businesses shall be
23 ranked in order of their qualifications and the appropriate
24 secretary or [~~his~~] that secretary's designee or the designee of
25 a local public body shall continue negotiations in accordance

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1 with this section until a contract is signed with a qualified
2 business or the procurement process is terminated and a new
3 request for proposals is initiated. The appropriate secretary
4 or the representative of a local public body shall publicly
5 announce the business selected for award."

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